

REMARKS

Claims 21, 24-29, 31-36 and 38 remain in the application after amendment herein. Rejections under Section 101 and Section 102 have now been withdrawn. However, all of the claims stand finally rejected under Section 103 based on Wong-Insley (U.S. 6,131,166) in combination with Becker (U.S. Pub No. 2002/0073094). Having carefully considered the citations relied upon in the prior art, applicant requests reconsideration and allowance over the prior art in view of the following remarks.

The independent claims 21 and 29 are each directed to a system or method for programming an automation system or an automation device. As apparently acknowledged by the Examiner, the primary reference, Wong-Insley, which has been relied upon for all of the art rejections, is not at all concerned with programming of automation systems or devices. In the prior response the claims were amended to further recite features specific to automation systems and devices. Despite secondary reliance upon Becker, it cannot be seen that the claimed subject matter is taught or suggested by any combination of the prior art. Reasons now follow.

The features of the storage medium according to independent claim 29 include a software system for providing a “programming environment to create device-independent functionality among automation devices in an automation system ...” The Becker reference, as acknowledged in the Final Office Action, relates to “reusing already created automation solutions in engineering.” See page 4 of the Final Office Action. This difference exposes an error in the final rejection. Since the references are each directed to different problems, the piecemeal extraction of features from each amounts to no more than a hindsight reconstruction of the invention. As noted in MPEP Section 2142, the tendency to resort to hindsight based on the applicants’ disclosure is often difficult to avoid due to the nature of the examination process. Nonetheless, such hindsight must be avoided. This hindsight is especially apparent based on the effort to read applicant’s compiler (see claims 21 and 29) on the text at par. [0031] of Becker. It is not understood how one can construe that passage as disclosing, per claim 21:

“a compiler for translating the solutions into an intermediate language in a runtime framework ...”

By all appearances the rejection is an attempt to simply find components in the prior art to reassemble a non-obvious combination. The mere fact that the Becker reference (the assignee's own prior art) relates to automation systems does not give any basis for a hindsight reconstruction. Nothing in either reference suggests such picking and choosing of components from unrelated references. In fact, even if there was an ability to combine the references as proposed in the final rejection, there is still no teaching to combine the components as claimed. Nor is there any teaching to use the components to achieve the claimed functions. No one, without knowledge of the present application, would look to these references to create that which is now claimed. It is only the applicant who teaches, per claim 21, both:

“automation engineering editors for generating solutions for one or more of the automation devices”

and

“providing an automation functionality in a standard framework for application among automation devices having different command sets for being programmed.”

This combination is not suggested by the prior art. In this regard, the Examiner may argue that the Becker reference involves creating solutions using already existing components. Notwithstanding such a position, there is still no basis for reconstituting the components of Wong-Insley and of Becker to create the invention. In fact, as already noted, the prior art lacks any teaching of the applicant's claimed compiler. Absent an intermediate language, the references do not result in the claimed provision of an:

“automation functionality in a standard framework for application among automation devices having different command sets for being programmed.”

If the Examiner disagrees with any of the foregoing, the applicant requests that the examiner provide a complete response so that applicant can reassess whether the rejection has any merit. Although the foregoing argument was expressly presented with reference to claim 21, it is applicable to claim 29 and all of the dependent claims.

CONCLUSION

As acknowledged by the Examiner, the Wong-Insley reference expressly relates to power management of computer systems and attached devices. There is no basis for extracting subject matter relating to Java applications for combination with discrete pieces of disclosure in the Becker reference. This is an improper basis for an obviousness rejection. Further, as already noted, there are further distinctions based on both components and functionality which the rejection overlooks.

For the above reasons the Wong-Insley reference and the Becker reference do not provide a basis to reject any of the claims. Applicants previously amended the claims to more clearly distinguish over the prior art. Now, a strained application of the same art was applied, this time overlooking deficiencies in even a piecemeal reconstruction. In summary, there is no basis for rejecting the claims. Removal of the rejection is therefore required.

The application is in condition for allowance. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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